Master and Servant—Injury "Arising out of and in the Course of the Employment."—In Pace *v.* Appanoose County, 168 N. W. 916, the Supreme Court of Iowa held that where one contracted with a county to do grading work with an engine, man, and team for a certain sum per day, an injury to him while moving the engine to another part of the work was one "arising out of and in the course of the employment," under the Workmen's Compensation Act of Iowa.

The court said: "The cases quite generally recognize a distinction between 'arising out of' and 'in the course' of his employment, though in several jurisdictions the phrase 'arising out of' had been omitted from the enactment. In Baver *v.* Bayer (191 Mich. 423, 158 N. W. 109), the phrase 'in the course of employment' was construed as though including 'arising out of,' found in the acts of other States. The distinction, however, is noted in State *v.* District Court of St. Louis County (129 Minn. 423, 151 N. W. 912) and has been recognized in England (Fitzgerald *v.* Clark [1908], 2 K. B. 796; Moore *v.* Manchester Liners [1910], 3 B. W. C. C. 527). In McNicol *v.* Patterson Wild & Co., 215 Mass. 497, 102 N. E. 697, the court clearly draws the distinction: 'It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words which shall accurately include all cases embraced within the act and with precision exclude those outside its terms. It is sufficient to say that an injury is received "in the course of" the employment when it comes while the workman is doing the duty which he is employed to perform. It "arises out of" the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.'

"The same question was under consideration in Bryant *v.* Fissell (84 N. J. Law, 72, 86 Atl. 458), where the court said: 'It remains

to be considered whether the accident arose both "out of and in the course of his employment." For an accident to arise out of and in the course of the employment it must result from a risk reasonably incidental to the employment. As was said by Mr. Lord Justice Buckley, in Fitzgerald *v.* Clarke & Son, 1908, 2 K. B. 796: "The words 'out of' point, I think, to the origin and cause of the accident; the words 'in the course of' to the time, place and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The latter words relate to the circumstances under which an accident of that character or quality takes place. The character or quality of the accident as conveyed by the words 'out of' involves, I think, the idea that the accident is in some sense due to the employment. It must be an accident resulting from a risk reasonably incident to the employment." We conclude, therefore, that an accident arises "in the course of the employment" if it occurs while the employee is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time.'

"The test in determining whether the injury has arisen in the course of employment is then said to be where the deceased, 'though actually through with the work, was still within the sphere of the work, or was doing what a man so employed may reasonably do within a time during which he is employed and at a place where he may reasonably be during that time.' The decisions of the courts and commissions are uniform in holding that if an employee has reached his employer's premises on his way to work or is still on the premises on his way home and meets with an accident, usually it will be adjudged to have arisen out of the employment. See In re Stacy, 225 Mass. 174, 114 N. E. 206; De Mann *v.* Hydraulic Engineering Co., 192 Mich. 94, 159 N. W. 380. * * *

"As pointed out, Pace was engaged in the act of moving his engine from one point where he was engaged to do the work to another, and therefore what he was doing was in the course of performing his work under these decisions, and the moving of the engine as he was undertaking to do was incidental to the work of hauling the grader. Although not hauling the grader, Pace was proceeding so to do with the engine on the ground where the work was to be done. What the law intends is to protect the employee against the risk or hazard taken in order to perform the master's task. Had the injury occurred while bringing the machine from Pace's home, some miles distant, to the place of employment, a different question would have been presented. As it was, the machine was on the ground, and it was being taken from one place thereon to another in the performance of work he had been employed to

do, and we reach the conclusion that under the record there is no controversy but that the injury arose 'out of' and 'in the course' of the employment, if such there were."

Master and Servant—Existence of Relation—Servant on Premises of Master before Time for Going to Work.—In Flanigan *v.* Kansas City Southern Ry. Co., 208 S. W. 441, the Supreme Court of Missouri held that under the facts of the case the relation of master and servant did not exist as to a servant who, contrary to custom, was upon master's premises 15 or 20 minutes before time for going to work, during which time he was injured.

According to the statement of facts, plaintiff was a car repairer, and had at times worked for defendant in its repair yards at Kansas City. In those yards was a washhouse where workmen kept their tools and where there was a stove for their use when they desired to make a fire to warm. Nearby was the foreman's office, where, before going to work in the morning, the workmen applied for and received their cards for the day. There was also the sandhouse in which there was a stove for drying sand. With defendant's acquiescence the workmen sometimes used that place to get warm. Plaintiff testified that he was working for defendant until some time in February 1914, when he got his foot hurt, and did not work until on February 25 and 26. When he quit on the last-named day the foreman told him to come back when his foot got well. The wages for the last two days were not paid him until after his injury. One day after Feb. 26th he was in defendant's yards and borrowed a quarter from one of the men, but did not apply for work. The company provided cars and passes by which workmen, including plaintiff, were carried from near their homes to said yards, arriving at the yards a few minutes before or after 7, the hour for work. Plaintiff testified that he did not take that route that morning, but that he took a street car about 15 minutes after 5, and that, after leaving the street car, he had over a mile to walk to his work. Arriving at the yards 15 or 20 minutes before 7, he did not apply at the foreman's office for his work card, nor did he go to the washhouse where his tools were, but went to the sandhouse to warm. There was no one there. The night man in charge of the sandhouse usually left about 6 or half-past. Plaintiff entered the sandhouse and stood by the stove about two minutes when it fell against and on him, bruising and burning him. whereby he suffered severe injuries, practically losing the use of one arm and hand.

The court said: "This is a very unusual case. The English case, Sharp *v.* Johnson & Co. (2 K. B. 139), decided in 1905, comes nearer to it than any other we can find. In that case the workmen, in-